EXHIBIT 422

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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IN RE ADAMS GOLF, INC. SECURITIES LITIGATION : CONSOLIDATED
: C.A. No. 99-371-KAJ

- - -

Wilmington, Delaware
Monday, April 10, 2006
2:00 p.m.

- - -

BEFORE: HONORABLE KENT A. JORDAN, U.S.D.C.J.

APPEARANCES:

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Rosenthal, Monhait & Goddess, P.A.
-and-
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APPEARANCES CONTINUED:

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THE COURT: Good afternoon. Please be seated. All right. This is the time we set to deal with yet another motion to dismiss in this case. So why don't we go ahead and do the introductions.

Mr. James.

MR. JAMES: Your Honor, let me introduce Michael Chepiga from Simpson Thacher. Mr. Chepiga has been admitted pro hac.

THE COURT: You are here for the underwriters.

MR. JAMES: Underwriter defendants.

MS. SCHWARTZ: Good morning, Your Honor. Alyssa Schwartz from Richards, Layton & Finger on behalf of the Adams Golf defendants. With me today I have Paul Bessette and Laura Moriarty, who have been admitted pro hac vice, from Akin Gump Strauss Hauer & Feld.

THE COURT: Okay. On the plaintiffs' side.

MS. KEENER: Good afternoon, Your Honor. Carmella Keener of Rosenthal, Monhait & Goddess. Present at

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counsel table are Todd Collins and Elizabeth Fox of Berger & Montague. Both have been admitted pro hac vice. And Donald Lewis of the Law Offices of Donald v. Lewis, also admitted pro hac vice.

THE COURT: All right. Thank you.

Mr. Bessette, am I correct in assuming you will be speaking on behalf of Adams Golf defendants here?

MR. BESSETTE: Yes, Your Honor.

THE COURT: It is your motion, so the floor is yours, sir.

MR. BESSETTE: Thank you, Your Honor.

As this Court recognizes, this is yet another motion to dismiss, this time the second amended complaint brought by the plaintiffs, who chose to amend and supplement their gray marketing claim and add several new related claims, in their words, to strengthen and broaden their claims in light of their continued investigation.

We submit, Your Honor, that what the plaintiffs have succeeded in doing is to plead themselves out of court.

THE COURT: Hold on just a moment, if you would, please. Let me ask you specifically about that. The assertion that they pled themselves out of court, I think, is based on, at least as to the gray marketing claims, that they somehow made this an industry-wide practice with their allegations or talked about it in terms of an industry-wide

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practice and that under the Third Circuit's opinion in this case, that means they are out of luck. Did I understand that argument correctly?

MR. BESSETTE: That is essentially right. There are three reasons why, one is gray marketing, for the very reason you stated.

THE COURT: As to that one, you seem to rely on -- I am going to take a look at your reply brief, not because it is the only place it comes up but because it seems to be where you make this point -- Page 7, going over to Page 8, the line is what matters is that the Third Circuit expressly rejected any securities claim based on the failure to disclose industry-wide phenomena. You cite the Third Circuit opinion at 278-79 and quote it as holding that Adams Golf was not duty-bound to disclose general industry-wide trends easily discernible from information already available in the public domain.

Having looked at the plaintiffs' amended complaint, I want you to tell me, what is it about the gray marketing allegations, in particular those affecting others in the industry, which you start getting into at Paragraph 66, that you think could fairly be characterized as, quote from the Third Circuit, easily discernible from information already available in the public domain?

MR. BESSETTE: Your Honor --

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THE COURT: That is a long question. I don't know if I made it clear.

MR. BESSETTE: I think it is, Your Honor. I think it is the heart of the matter on the gray marketing, is what new allegations have they alleged that has turned this from a firm-specific occurrence that Section 11 and the laws require to be disclosed to an industry-wide occurrence that need not be disclosed under the law of the case and the case law cited by the Third Circuit in the Adams Golf case, particularly Cline and Commonwealth Edison. The answer is this.

They have alleged in those four, five or six paragraphs two things. One, gray marketing, which we all know only occurs for a name-brand popular product in whatever industry it is in. That is what gray marketing is. If you have a name-brand popular product, the risk of gray marketing is there. So what the plaintiffs have alleged is two things. One, that gray marketing was common in the particular golf industry that had hot products. For example, Callaway, Taylor Made, Ping, and Titleist. That is the relevant golf industry. Each of those manufacturers suffered gray marketing.

THE COURT: So your position here depends upon my agreeing with you that those allegations reflect information which was in the market that all consumers

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should have known about, and therefore without saying anything about the gray marketing problem that they have alleged with respect to Adams Golf, consumers should have known and discounted for that fact.

MR. BESSETTE: Almost. There is a second point to that, though, Your Honor. All I was saying there was they have alleged that it was common. In other words, each of these four suffered. And then they also allege that it was public and publicly available, that it was available to those investors who took the time to discover it. In particular, there were news reports about it, Callaway disclosed it in their own filings.

So the touchstone that the Third Circuit referred to in Cline and Commonwealth Edison was that a company, under Section 11, is only required to reveal in its prospectus information that is useful to professional traders and investors, that is, new information specific to the issuer, not public information that is common to the industry. That is the key, not public information that is common to the industry.

What I am saying, Your Honor, is those allegations have established both of those predicates. It was common in the industry of golf manufacturers with hot products, they all suffered gray marketing. And that was easily discernible by professional traders and investors

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because it was public knowledge.

THE COURT: Okay. Do you have any other arguments about why the gray marketing allegations should be dismissed? I take it that there are several, you have got a variety of things that you disagree with in this second amended complaint -- I guess I would like to hit them to the extent possible one at a time -- that I understand to be at least one of your arguments, maybe the argument, for dismissing gray marketing claims.

Is there any other argument for dismissing gray marketing claims?

MR. BESSETTE: I think, Your Honor, it is sort of related to it. It goes back to the consolidated amended complaint, which had the retail oversupply allegations. For the very reason that the District Court and then the Third Circuit affirmed that those allegations were industry-wide occurrences that need not be disclosed under the law, if you look at those allegations in the CAC and compare those with the second amended complaint's allegations about gray marketing, that it is common in the industry, that it was publicly available, what I am saying is, for the exact same reasons, that's another reason why, it underscores what they have pled, which is the two predicates, common information and publicly available.

THE COURT: Okay. Let's turn to other aspects

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of the second amended complaint that you think ought to be dismissed. What else are you going after?

MR. BESSETTE: Your Honor, what we are claiming is they pled themselves out of court for three reasons. Gray marketing is one of them. The new allegations, we just talked about that. The other is, they have turned what was a negligence-based case, a Section 11 case, into a quintessential fraud case. I don't say that lightly. It is not like I am here to revisit that issue.

There are new allegations in the complaint that change the nature of the case. And there is no doubt that if the case brought under the '33 Act sounds in fraud, then Rule 9(b) applies. That was recently affirmed in the Third Circuit with the Suprema Specialties case. That is still the appropriate law.

The Court has to look at the allegations, not the legal theory the plaintiffs pronounce and not the conclusion that this was negligence and not fraud. But you have to look at the underlying allegations.

THE COURT: Don't I have to look at the 12(b)(6) standards that say they are only thrown out if there is no theory under which they can prevail on the facts they allege? Help me. I hear you telling me, forget what they tell you their theory is. Look at the allegations. If it sounds in fraud, they have to lose.

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It seems at odds to me with the 12(b)(6) standard I am familiar with, which to me is they are only out if there is no way they can prevail on the basis of their allegations. Straighten me out.

MR. BESSETTE: That is exactly right. What I am saying, Your Honor, is, but now you have to determine whether Rule 9(b)'s particularity requirements apply to their allegations. And if they do, and they haven't met them, then you can toss it out for that reason. And what I am saying is, this is a fraud case. What they have alleged, at its core, is that the defendants knew about gray marketing. And they go to great lengths in the allegations to talk about different memos and other reasons that they knew, that they knew about gray marketing and they concealed it from investors by not referring to it in the prospectus.

This isn't a case where the plaintiffs alleged that the defendants should have done an investigation or if they did they could have discovered this and so they were negligent. That's not at all -- you can't find that anywhere in the complaint. The basis for this case now, with this additional pleading, is that the defendants concealed it. They knew prior to the IPO about gray marketing and the related problems. They didn't disclose it purposefully in the prospectus.

THE COURT: Okay.

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Now, let me ask the folks on the other side to respond to that right now. Mr. Collins, you have got the floor on this.

MR. COLLINS: Thank you, Your Honor.

THE COURT: Help me out with how to address Mr. Bessette's concern that you have just changed the basis of your complaint.

MR. COLLINS: Can I start with sounds in fraud, Your Honor?

THE COURT: Sure.

MR. COLLINS: I heard Mr. Bessette say that plaintiffs have alleged that the defendants knew about gray marketing at the time of the IPO. Of course, that is correct. That is the allegation, Your Honor. And that was exactly the situation before, when Judge McKelvie said, plaintiffs merely allege that the IPO offering materials included materially false and misleading statements and omitted to disclose material facts.

Nowhere in the complaint do plaintiffs' allegations focus or even refer to the defendants' state of mind. It was true then. It is true now. Law of the case. That's what Judge McKelvie ruled in December of '01. No appeal was taken. At Page 274, Note 5, the Circuit Court indicated it had no concern with that conclusion by Judge McKelvie.

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THE COURT: That is a puzzling thing. You are telling me that it's law of the case that none of your allegations deal with state of mind. But you have added allegations since the time Judge McKelvie made those statements and that's the basis of their argument. How could the law of the case about allegations which have been changed prevent me from asking what the allegations as now amended look like?

MR. COLLINS: I think we should go through that, Your Honor. Those allegations haven't changed.

THE COURT: That's what I need you to talk about. It won't help me a bit for you to say it is law of the case as to what was in front of Judge McKelvie four years, five years ago, because you did amend the complaint. That's what I have to wrestle with now.

MR. COLLINS: That's fine. Let me deal with one thing that is consistent throughout the current complaint and the prior complaint.

The thing that is consistent is prior to the IO there was a press release. And that press release addressed gray marketing. So that was the state of play at the time that Judge McKelvie concluded that there were no allegations as to state of mind, because, Your Honor, knowledge of the existence of the issue and alleging knowledge of the existence of the gray marketing issue is not sounding in

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fraud.

THE COURT: How about addressing the assertion that you have gone beyond knowledge of the issue to allegations that there was active concealment.

That is the assertion. Right, Mr. Bessette?

MR. BESSETTE: Yes, Your Honor.

THE COURT: Now you are talking about active concealment. And that is fraud, and you are not allowed to do that under the guise of a Section 11 case.

MR. COLLINS: Your Honor, the word concealment does not appear anywhere in the allegations with regard to gray marketing.

THE COURT: Let's get to the specific here. We will do point-counterpoint.

Mr. Bessette, you tell me what it is you are pointing out exactly, and I will have Mr. Collins address it exactly, then we are not talking about it does say this, it doesn't say that. Say what you are pointing at, and he can address that expressly. What are you pointing out when you say that's a fraud, that's an allegation?

MR. BESSETTE: Paragraph 86 of the second amended complaint, Your Honor.

THE COURT: Let's look at it.

MR. BESSETTE: I just want to get my copy.

"The registration statement and prospectus,

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however, omitted any discussion of Adams Golf's material risk that authorized retailers' margins might decline. This material risk to the company was acknowledged by defendants among themselves, pre-IPO, but concealed from investors in the registration statement and the prospectus."

That is one sentence where they use the word conceal. And my argument is, that goes to retail margins. I have got a case to talk about this. But if the predicate of their case throughout, gray marketing and other things, were known pre-IPO and not disclosed, that construct is a fraud case. It is not as if had the defendants done a reasonable investigation they might have discovered this. Therefore, it is an innocent or negligent omission. That is a negligence case. But when it's knowledge pre-IPO, failed to disclose in the prospectus, no matter what it relates to, that is a fraud construct.

THE COURT: All right. What is your response to that, Mr. Collins?

MR. COLLINS: Your Honor, first of all, as I said, that allegation has nothing to do with gray marketing. That has to do with one of the three new claims, which has to do with retailers' margins. Second, Your Honor, we do not agree that the one word "concealed" in a 25-page complaint converts it to fraud.

You can have a ball concealed by bushes. You

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can have the sun concealed by clouds. It seems to me it is parsing things a little too fine for the defendants to say, aha, the word concealed went in and we define that in a way that means that the whole complaint has to sound in fraud, including allegations where the word concealed doesn't even appear.

Your Honor, the touchstone here cannot be whether the defendants knew at the time of the IPO that gray marketing existed, because that is the situation. They did know that. We have alleged that. But that is not what the law says, Your Honor.

If you look at the Suprema case, for example, that complaint, in Suprema, you actually had fraud allegations in the complaint. It referred to massive fraud. It referred to one of the worst frauds in the State of New Jersey, ever. But because the Section 11 allegation, separate from the 10(b) allegations, contained no such language, then it was found as long as you plead negligence, according to the Third Circuit and this opinion in February of this year, you plead negligence, then you have a negligence claim.

Your Honor, the situation with regard to gray marketing in particular is precisely the situation that existed before, before Judge McKelvie ruled, and the defendants did not appeal on that that point, Your Honor,

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and the Third Circuit indicated acceptance.

THE COURT: Okay. I think I have your argument on that.

I am giving the ball back to Mr. Bessette. You will have your chance to speak. By the time we finish, Mr. Collins, I will have given you a chance to wear yourself out. But we have given it back to Mr. Bessette now.

MR. BESSETTE: Just briefly on this one point, Your Honor.

This case is not like Suprema Specialties, because in that case what the Court was deciding was, you have got a mixed case. You have 10(b) claims, you have Section 11 claims, like Shapiro, and the Third Circuit said, when you construct them and try to do it this way and just plead negligence here, that is going to be okay. This case is much like the Leadis Technology case, decided five weeks ago by Judge Breyer in the Northern District of California. I have given a copy to plaintiffs' counsel. I would like to hand a copy up to the Court.

Briefly, why that case is important, because it goes to the construct. That was just a Section 11 case. But the predicate was that the defendants were aware -- well, defendants made cautionary statements about various things. The plaintiffs alleged that the defendants were aware that what they were saying in the cautionary

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statements was actually occurring pre-IPO and they concealed it in the prospectus. What the Judge said was, there is no way that can be a negligence case. He said that the alleged material misrepresentations and omissions were not and could not have been a result of a failure to exercise reasonable care. This was something about knowledge prior to the IPO and failing to disclose. That construct is fraud, not negligence requiring 9(b).

THE COURT: Okay. Let's play out a hypothetical for a second here. Assume for the sake of our discussion that I shared your distress about retail margin arguments in the complaint, their assertions in that regard, but that the plaintiffs' assertion that they were pursuing only a negligence claim on gray marketing, whether they pled it inartfully or not in their second amended complaint, it was still focused on a negligence claim, and that's what they intended to pursue at trial. Is your assertion that I would be bound to still dismiss the complaint on the gray marketing charges?

MR. BESSETTE: I think, Your Honor, whatever they intended, what they actually pled in our view was fraud, and if they didn't meet the specificity of 9(b), there is that.

Now, the Court could conclude that 9(b) applies and with respect to gray market, because there is a lot of

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specifics there, maybe they even met the 9(b) standard for gray marketing allegations. We don't think they have. But that is really the inquiry, is, do they have to go back and do specifically more detail on gray marketing because now 9(b) applies?

THE COURT: If they did meet it, then what?

MR. BESSETTE: If they met it, the gray marketing claim survives. All we are saying there on the 9(b) part is particularity. On the other parts we are saying they haven't stated a claim, gray marketing, for the reasons we discussed briefly, then the new claims, for reasons we will get to.

THE COURT: Let's get to those, to the other reasons why these other claims, what you characterize as other claims need to get ushered out the door.

MR. BESSETTE: Well, since we are on retail margins, Your Honor, let's stick with that.

The essence of plaintiffs' claim, and I think we laid it out in the briefs very well, is we, Adams Golf, didn't use the phrase retail margins in the prospectus and in all of its warnings. What Adams Golf warned was of significant price erosion and it warned that there may be competitive pressures resulting in lower than expected average selling prices. So you have got retail prices, sufficiently warned about, that they might fall. But retail

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margins will necessarily fall as well if retail prices fall. That is one of those specifics that, it's intuitive for a reasonable investor. And under the Tracinda case, Adams Golf is not required to disclose information that is obvious or easily inferred from other disclosures. That is exactly what the basis of this argument is. We warned about falling prices, average retail prices falling.

The fact that that meant retailers would have a smaller margin because the sales price is falling, that is easily inferred. We don't have to put all the detail in. That is one point on retail margins.

The other sort of related argument is the selective retail distribution. That is another claim that comes, from our point of view, out of nowhere, which is related to gray marketing. But essentially they are saying, we should have warned that we didn't have adequate means to stop gray marketing, that we didn't have written contracts with retailers, that we didn't have serialization and these other things. All of that --

THE COURT: Let me ask them a question, because I don't know that that is meant as a separate claim. We will take up those two things right now.

Mr. Collins: I can take the second of those first. Is your assertion that these folks should have told the investing public we don't have contracts, we don't mark

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our goods, we don't do anything to make sure that there is no gray marketing? Is that a separate claim?

MR. COLLINS: It is, Your Honor.

May I have the temerity to ask the Court's leave for one thing? I have not had an opportunity yet to talk about industry-wide issues. I am itching to do so, but only when Your Honor is ready for it.

THE COURT: Okay. Well, not yet, because I want you to answer the questions that are on the table.

MR. COLLINS: It is a separate claim, Your Honor. May I explain why?

THE COURT: Yes.

MR. COLLINS: One of the things that the Third Circuit ruled was that the selective retail distribution representation in the registration statement was false and misleading, although technically accurate, it was false and misleading because there was no disclosure of the gray marketing problem. That's at Pages 277-278 of the opinion.

Here again, we have a situation in which we have representations in the registration statement with regard to selective retail distribution, very important, according to the registration statement, with regard to the business plan and the possibility of this being a profitable company, very important. The touchstone of that was maintaining retail margins.

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Retail margins meant something very important. It didn't just mean the price at which the clubs were sold. It meant the margins or profits going to the authorized retailers. The one did not lead to the other.

THE COURT: I feel like we just morphed out of the no contracts and no marking of clubs into the margins. I take it that those are two separate claims in the plaintiffs' mind, at least that's how the defense characterizes it. Are they right?

MR. COLLINS: They are two separate claims.

THE COURT: Leave the margins piece aside for a second and focus in on the assertion that you have a claim because the prospectus didn't have in it some sort of a statement that was to the effect of we have nothing in place to track our clubs.

MR. COLLINS: Yes, Your Honor.

THE COURT: Help me understand how that is some claim other than or separate from or apart from the gray marketing claim that you are pushing forward.

MR. COLLINS: First, because it makes the -- it is related to gray marketing, certainly, Your Honor. Yes, it is. But it is separate because it constitutes a separate material risk.

THE COURT: How?

MR. COLLINS: There was a listing of material

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risks in the registration statement. That listing was incomplete because it didn't include gray marketing. But it also didn't include this listing of the absence of reasonable and necessary precautions with regard to the marking of clubs and also the contractual provisions.

THE COURT: Which is only meaningful in the context of gray marketing. Right?

MR. COLLINS: It is related -- yes, correct.

THE COURT: Please don't tell me it is related to. I need you to conceptually help me. I am not trying to mess with either side's theory of the case. I am only trying to understand it so I can deal with it. If there is some basis for recovery other than gray marketing that's associated with this contract lack, or contract control, marking control issue that is in play here, help me understand what it is.

MR. COLLINS: All right. It's gray marketing.

THE COURT: That's what I think.

MR. COLLINS: Can I take a moment of explanation?

THE COURT: Sure.

MR. COLLINS: It should have been listed as a separate material risk because it was a separate material risk. Gray marketing was a risk at the time of the IPO that was specific to this company. In addition to that, the gray

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marketing risk was behind because of the failure to disclose that this company didn't have in place these reasonable and necessary precautions. So therefore, the way the risk disclosure should have looked would have been to have listed the gray marketing risk and also separately list this particular risk of the lack of reasonable precautions.

THE COURT: Okay. Now let's talk about the margins.

MR. COLLINS: Thank you, Your Honor.

I think the important difficulty, and the thing that the defendants are missing here, is that the price of Adams golf clubs going down in general to the retailer does not mean the same thing as retailers' margins getting squeezed. And it doesn't say to the market that there is a separate particular risk to Adams Golf in the event of a squeezing of those retailer margins.

There are at least two ways we know that. Your Honor, it might occur that there is a decline in the price of Adams golf clubs in general, but there is not a decline in the retailer margins, the authorized retailer margins, because, for example, as we alleged at Paragraph 63 of our complaint, there might be a price matching program, as there was pre-IPO in Canada.

In addition to that, Your Honor, there might be no dollar-for-dollar, so to speak, impact because there

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might be a credit given to authorized retailers, as, in fact, there was in the fourth quarter of 1998, as alleged in the complaint at Paragraph 69. In other words, Your Honor, the one doesn't necessarily mean the other.

Beyond that, Your Honor, this issue of how critical the retailer margins, the authorized retailer margins are to the company was described at length, for example, at Page A25 of the prospectus, the registration statement prospectus, which is attached to the defendant's opening brief, To preserve the integrity of its image and reputation, the company currently limits its distribution to retailers that market premium-quality golf equipment and provide a high level of service and technical expertise.

In other words, image, reputation, and profits turn on keeping those authorized retailers happy.

THE COURT: And you don't think that sophisticated and knowledgeable investors, the investing public would know --

MR. COLLINS: I think they would not, Your Honor. I don't think they would know that.

THE COURT: You don't think that people looking at falling prices would say, there is a squeeze coming from this?

MR. COLLINS: There are two things they wouldn't know, I think. One is, as I say, it doesn't follow that a

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squeeze to the authorized retailer margins necessarily follows from the decline in the price overall. But the second thing the market wouldn't know is that the price matching program in Canada, pre-IPO, the 4.3 million credit fourth quarter '98, would pose additional material undisclosed risks as Adams Golf goes out there and spends its dollars to make sure it keeps its authorized retailers happy. That, too, was not disclosed.

So therefore, the failure to disclose the risk to Adams because the authorized retailers' margins might get hurt or might decline, leading to various different negative ramifications for Adams, wasn't disclosed and should have been.

THE COURT: Now, the defense argues, I think -- help me out if I have got it wrong -- that the Third Circuit has already ruled that an industry-wide oversupply is not something you needed to tell people about, that that meant, by inference, sensible people looking at it would know there would be downward price pressure, and that, you can put a different hat on it and say profit margins would be squeezed, but what you are really saying is, when your price drops, it makes retailers unhappy. Maybe I have read too much into their argument.

MR. COLLINS: Maybe they are saying that, Your Honor. I think they are saying that there is a one-to-one

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relationship between the price of Adams golf clubs out there and retailers' margins. And that is inaccurate.

THE COURT: Okay.

MR. COLLINS: It also leaves out the other element of the issue here, which is the additional risk, which came to fruition in the fourth quarter of '98 and also before the IPO in Canada with price matching, more dollars out of Adams Golf to try to address this authorized retailer margin issue.

THE COURT: All right.

MR. COLLINS: Your Honor, can I, without being too pushy, address industry-wide problems?

THE COURT: Sure, go ahead.

MR. COLLINS: Very quickly, Your Honor. I will just say this.

I thought I heard Mr. Bessette say, that is the industry, those four companies, which were the ones we cited at Paragraphs 67 and 69, Callaway, Taylor Made, Ping and Titleist. There is a factual issue as to what the industry was and wasn't. As we get into discovery, Your Honor, we will have lots of discovery as to what the industry consisted of. We will, for example, look at analysts' reports and what companies those list as the industry. We will look at the 1999 proxy statements.

THE COURT: Have you been taking discovery?

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MR. COLLINS: We have been, Your Honor. But I would have to go outside the record, tell you a whole list of other competitors, which you don't want to hear right now, Your Honor.

THE COURT: You are right. It made me a little nervous when you said get into discovery, because I was sort of under the impression that that was going on.

MR. COLLINS: We have. We have document discovery. We haven't started taking deps yet.

In other words, what Mr. Bessette is putting forward here is something not on the motion to dismiss stage but the summary judgment stage if he wants to, as to whether those four companies constitute the industry, because all of the litigants know that is not at all the case, and one could cite from public documents to that effect. But I won't take your time with that, Your Honor. It is probably not appropriate now.

THE COURT: And the matching program that is discussed in 63, this is pre-IPO in Canada. Correct?

MR. COLLINS: Correct.

THE COURT: And the allegation is that because this was happening in Canada, they should have figured it was happening in the United States, therefore, a failure to say it in an IPO in the U.S. is actionable.

MR. COLLINS: Not exactly, Your Honor. We are

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not alleging that the matching program in Canada by itself should have been disclosed. Instead, as you will recall, at an earlier stage of this litigation, the defendants argued materiality. That is what the District Court ruled against plaintiffs on with regard to gray marketing, and there was the reversal, because the Third Circuit said it could not be said -- it could not be concluded at the motion to dismiss stage that there was no materiality there.

So what we did was, when we amended the complaint, having taken a lot of document discovery, Your Honor, we were faced with a situation, we had a deadline for filing the amended complaint. And we thought it fair so that there not be surprise to the other side that to the extent that we had additional information, it was appropriate at this stage, consistent with our '33 Act negligence pleadings, to set forth that additional information.

And one of the things the defendants challenged us on at the motion to dismiss stage, initially successfully then unsuccessfully at the appellate level, was the materiality of the gray marketing allegations.

So we therefore thought it was appropriate and fair and reasonable and necessary to add to basically the gray marketing materiality allegations.

The price matching program in Canada pre-IPO was

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not by itself material, at least we have not so alleged. But it is part of what adds to the very grave problems presented to Adams Golf in terms of the risk and also the ongoing operation of this gray marketing problem at the time of the IPO.

THE COURT: But if I understand you correctly, you are saying that apart from the risk of the gray market, and the risk that the gray market would mean a threat to the high-end sales network, which by your theory was key to Adams Golf success, that there should have been another disclosure that said profit margins are at risk and that's also going to wreck our marketing network. Is that right?

Again, I am back to the question of, how is this different from gray market? And let me just tell you right up front. I have spent a significant amount of time with your briefing and thinking about this. You know, I think your gray marketing stuff stands.

I don't think they have pled themselves out of court, Mr. Bessette. I think this gray marketing thing, it's been here, it's been up, it's been back, they may have added facts, but they are not out the door, and we are going to trial on this case and we are going to trial on time in this case. My only question is, what are the causes of action that we are going to go to trial on? The lack of controls? I will tell you right now, I am unimpressed by

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that. If you feel like you want to say something else about it, I will let you. That doesn't sound to me like anything more than evidence that there may have been a gray marketing problem, but not an independent basis or cause of action that there was some material omission because they didn't write in the prospectus we don't mark our clubs, or something like that.

I want to make it clear, I am not making evidentiary, in limine rulings at this point. I am not saying you can't put on evidence about what did or didn't happen. What I am saying is, I want to pin down what your cause of action is. And if your cause of action, you thought you have a cause of action, that is, they didn't say in their prospectus we don't mark our clubs, I would agree that that is a cause of action that had to be dismissed because that doesn't strike me as something which is separately actionable on material risk in and of itself. It is nothing more than evidence associated with your gray marketing claim.

Now, I hope that gives you a good idea of why I am asking the kinds of questions I am asking.

As to this profit margin issue, if this is something different than gray marketing, as to which you are saying there should have been a statement in the prospectus, I need you to be explicit about that, because that's

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something I am trying to explore here. I am just frank to say, but, guys, this case is now seven years old. And come hell or high water, this case is going to trial, unless something remarkable happens at the dispositive motion stage. At the case dismissal stage here, we are not cutting this off.

That says nothing about what record you guys may be developing that I don't see. It could be that they are successful in creating a crushing record that shows there is no material issue of fact and you can't win. Barring that, we are going to trial, I think it's August of this year. Unless I am mistaken, it is August of this year.

So help me understand, if you think you have got a separate cause of action, what it is, on this margins issue.

MR. COLLINS: There was no disclosure that as a result of the risk posed by retailer margins, the company faced the risk that it would have to pay out millions of dollars to the authorized retailers to maintain its so-called selective retail distribution. That in fact occurred.

THE COURT: What is the threat to the margins coming from? Is it coming from industry-wide falling prices? Is it coming from gray marketing? Is it coming from both? Or is there something else out there?

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MR. COLLINS: It's coming, to the extent we are aware at this point, Your Honor, it was coming from industry-wide competition. It was coming from gray marketing. It was coming from perhaps changes in the golf world in general. It was coming from a lot of different things. However, how those things applied particularly to Adams Golf were specific to Adams Golf.

So, for example, this Canadian price matching program pre-IPO is something nobody of course outside the company knew anything about. There was no way you could check up. There was no public source with regard to any such things like that.

But the need to maintain retailers' happiness so that they kept selling Adams golf clubs was something that turned on company-specific factors primarily, and certainly industry-wide factors beyond that. But it was more than gray marketing because it meant dollars out of pocket.

THE COURT: When you say it meant dollars out of pocket, you are saying that based on the Canadian program.

MR. COLLINS: We knew that. Certainly, the company knew that at the time. And certainly, the proof was in the pudding by the fourth quarter.

THE COURT: Do you have some other pre-IPO event associated with the United States that was money out of pocket, like the Canadian matching program?

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MR. COLLINS: We have allegations -- the only matching program, money out of pocket that we are aware of and have alleged was Canada. We have also alleged, however, Your Honor, that I believe in three different states, pre-IPO, gray marketing was going on. And so, therefore, it was logical to assume that price matching credit to retailer sorts of programs constituted -- it was knowable as opposed to known, but it was knowable. And that's all we need to do under the Circuit Court of Appeals opinion, it was knowable that this risk, dollars out of pocket, existed.

THE COURT: All right. Okay. I will give the floor back to your opposing counsel.

MR. COLLINS: Thank you.

MR. BESSETTE: On the retail margin issue, Your Honor, we stand by the argument. They make a separate claim that there should have been a separate disclosure. What our disclosure was was that average selling prices may drop. So does a reasonable investor think if prices drop they are going to spend money to try to get efficiencies or price match or do whatever? Yes. It is an obvious fact. If the prices are dropping, margins may squeeze and drop. The company may take steps to combat the competition or whatever it might be. We do not have to provide every little detail. That's the law. That's what I think a year ago in the Tracinda case Judge Farnan said the same thing. You don't

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have to have the detail. That is all I have heard here: Adams Golf should have provided the detail.

THE COURT: What is the next claim you think they are trying to insert here as a separate cause of action that you want to take a crack at?

MR. BESSETTE: I think, Your Honor, given your sort of remarks and where we stand, we ought to move to the questionable sales practices. That is starting at Page 18 of the second amended complaint, which essentially says that Adams Golf failed to disclose term risks posed by pre-IPO sales practices and under-reserving. And what we are talking about are --

THE COURT: Double shipping.

MR. BESSETTE: Double shipping, unlimited return rights and inadequate return reserves. Those things that are new to this case now are all material risks according to the plaintiffs that Adams Golf should have disclosed.

Now, the only possible legal basis providing Adams Golf with a duty to disclose those practices is Item 303 of Regulation S-K. There is no other basis, because the plaintiffs admit that these were not and did not have an effect on the IPO financial statements, but that this was a material risk that would impact future results.

The only basis is 303. Our argument is very clearly that they don't even meet the elements of 303.

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There are four of them: a known trend or uncertainty exists which was known to management pre-IPO, that the company reasonably expects to have a material impact on net sales or revenues, and that the trend is persistent and quantifiable.

What plaintiffs have done, actually, pretty remarkably, is in their opposition they actually disclaim that management knew any of these things pre-IPO and only learned of them post-IPO. That's in their opposition, refers to the paragraphs in their complaint. That should end the case for those claims.

If there is no duty to disclose under 303 because these practices were not known to management pre-IPO, you can't state a duty to disclose. That's Item 1.

Item 2 is that these three different things, double shipping and all of that, don't qualify as known trends. I meant to make it clear, we don't even have to get into this part of the argument because they don't have a retort to that. They have already disclaimed knowledge by management. They can't find a duty to disclose.

But let's just say Mr. Collins comes up with something. As we put in the briefs, there is no known trend on any of these things, just as they have alleged in the complaint. Double shipping, for example. I think it was one salesperson was involved. They don't say how many clubs or how many times or for what period of time. It's just Jay

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Greaney, the salesperson, did some double shipping. That on its face doesn't qualify as a known trend, quantifiable by the company. It is not even quantifiable by the plaintiffs.

Increasing returns, same thing. They don't talk about the company's stated 90-day returns policy or that any returns from Hawaii or anywhere else were outside of that policy. There is no detail. There is nothing to establish this was a known trend. Clearly, it wasn't known to management, according to the plaintiffs themselves, not quantifiable, so there is no duty to disclose.

And with the reserves, all they point to is the returns in July post-IPO to say that the reserves pre-IPO must have been inadequate. Classic sort of hindsight analysis. Nothing to say that the reserves pre-IPO were inadequate. In fact, they were consistent with their long practice.

So in other words, these newly manufactured claims of questionable sales practices that the plaintiffs want to put in the rubric of a material risk known pre-IPO that should have been disclosed, they can't get there. They can't get there for a number of reasons. So those claims ought to be tossed.

THE COURT: All right. Any others besides these? I think we have hit the four that you hit in your brief. Is there anything else?

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MR. BESSETTE: No. Those are the claims. We have got some control person allegations we would like to talk about. But those are the only claims, Your Honor.

THE COURT: That also hits the financial accounting issue or not?

MR. BESSETTE: I think -- Mr. Collins can correct me -- I understood that was just sort of flavor as to why these practices were material risks. I don't think there are separate claims. There are no accounting claims according to plaintiffs in their opposition.

THE COURT: All right.

MR. COLLINS: Thank you, Your Honor.

Questionable sales practices, Your Honor, there are at least three different reasons why the questionable sales practices should have been disclosed. And the least of them is 303. Although they did constitute a known trend, that is the least of the reasons.

The first reason these questionable sales should have been disclosed was, again, they were a material risk. They constituted a material risk with respect to post-IPO results. And, in fact, Your Honor, we know that there were, indeed, the September quarter results were indeed disappointing, and the defendants at an earlier stage urged this Court that the class period should end with the disclosure of those third quarter results in October.

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First of all, it is a material risk, it wasn't included in the list of material risks, and it should have been there.

THE COURT: Your opposing counsel says you have acknowledged that the management didn't know about this.

MR. COLLINS: Your Honor --

THE COURT: Yes or no.

MR. COLLINS: First of all, if it is a material risk, it doesn't need to be known. And the Third Circuit specifically addressed this in a footnote, which I could probably give you, it does not need to be known for federal risk analysis. It only needs to be knowable. And in fact, the Third Circuit said, Footnote 7, if I may, Your Honor, the Third Circuit said that the District Court made a mistake, this is Judge McKelvie, when it required the plaintiffs -- Footnote 7, Your Honor.

THE COURT: All right.

MR. COLLINS: In addition to materiality, the District Court required the plaintiffs to show that an omission or misstatement was known to the company at the time of the IPO. The Court goes on to say, in very strong terms, that is not correct.

For material risk disclosure, the standard, the requirement is knowability, not whether it's known.

So first of all, it wasn't listed as a material

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risk. Secondly, Your Honor, something that I think is clear, but maybe I should make explicit, when we said that there was disclosure that was required that was not set forth, it is not just a matter of there being material risk disclosure that is incomplete so there are material omissions. There is actually a requirement in Form S-1, as the drafters of the registration statement were well-aware, and that requirement sends the drafter of the S-1 to Regulation S-K, which at Item 3 sets forth that it is necessary to include the -- Item 3 of Form S-1 directs the drafter to Item 503 of Regulation S-K. And Item 503 requires a listing of material risks: When appropriate, provide under the caption risk factors a discussion of the most significant factors that make the offering speculative or risky.

Nothing, Your Honor, about known. It's knowability.

Now, there is an issue in addition to that, an additional reason why disclosure should have been provided. I would put it the third out of three, is Item 303 of Regulation S-K. And that does refer to disclosure of known trends. And as defendants describe carefully in their reply brief, a known trend in that case, assuming this is the one area in which it's required that we have known, not just knowability, but known, it says that it's known to

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management. And as you will also see from the defendants' brief, they list the members of management. And they include, among the members of management, Mr. Gonsalves. Mr. Gonsalves was head of sales. Mr. Gonsalves is not a defendant. The defendants themselves say he is management. What we allege, Your Honor, at Paragraph 72, is that he was a friend of Mr. Greanay, who was the person we identify as engaging in the double sales.

We also go on at length, Paragraph 76 to 80, saying that Barney Adams, when he found out about what was going on, apparently hit the roof. He said things such as, Are we living the big lie? And if you look at Paragraph 80, Your Honor, the logical reasonable inference was as soon as Mr. Adams figured out what was going on, he fired Gonsalves. So therefore, Your Honor, from defendants' own papers, it would appear, to the extent we even have to get that far, that under 303(k), this was a known trend, and it's a logical, reasonable inference that management knew, not because Barney Adams knew but because non-defendant Mark Gonsalves knew. He was canned as soon as the information was made available.

So therefore, in addition to the failure to list all material risks when they list some material omission, in addition to the violation of Form S-1 incorporating Item 503 of S-K, the second failure to disclose material risks that

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are required, in addition to that, under S-K, it is true, it was a trend known to management, Mr. Gonsalves, it wasn't known to Barney Adams or the other defendants, or at least we don't believe, and we haven't so alleged.

So we believe, Your Honor, it is material, it is quite distinct from gray marketing. And we think that the claim does need to be sustained.

THE COURT: Talk about whether accounting is or isn't some separate thing you are trying to raise.

MR. COLLINS: It isn't, Your Honor. It really relates to no more than we have just discussed. It relates to a known trend at the time of the IPO that wasn't disclosed. There are so many other reasons. Yes, there were known trends, including with regard to what was going on with gray marketing that should have been disclosed. It was a known trend. But there are so many other reasons why the gray marketing allegations should have been disclosed -- sorry. I talk too much.

Yes, it is not anything other than an additional reason why disclosure was required.

THE COURT: Gotcha, I think.

All right. Mr. Bessette, I will give you the last word here.

MR. BESSETTE: Thank you, Your Honor.

Mr. Collins has succeeded in clouding the issue.

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I think we need to get back to what the definitions are. Footnote 7 of the Adams Golf Third Circuit opinion states nothing more than what the law is under Section 11, which is an obligation, a duty to disclose a material misstatement or omission of existing fact. That's what we are talking about. He is not saying -- he has already said that these things did not affect the IPO financials. These weren't material misstatements or omissions of existing fact that affected the state of affairs at this point.

THE COURT: Unless I misunderstood -- and you correct me if I am wrong, Mr. Collins -- the assertion of plaintiffs is this was an existing statement of affairs known within the company, certainly known to the head of sales, that the head of sales knowing it, it was knowable to other management personnel. It was a knowable fact. Have I got you wrong?

MR. COLLINS: If I may, Your Honor, it was knowable, it was a knowable fact. It was a known fact to a member of management, Mr. Gonsalves. That is the reasonable inference.

THE COURT: That's what I was trying to say. Gonsalves, when I said head of sales, that's who I was referring to. That is the person. Right?

MR. COLLINS: Yes.

THE COURT: Was he not identified here --

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MR. BESSETTE: He is one of management, that's correct, Your Honor.

THE COURT: Then I gotcha.

MR. BESSETTE: The point is, what they are claiming is not that these are material facts at the time that would impact the result at the time. These were what they are calling material risks, that is risks that they would have material effects post-IPO. That is a separate issue than a material fact existing at the time. What they pled is these are material risks that would impact, that is, have a material effect, post-IPO.

THE COURT: Hold on a second. Are you trying to say that if these folks -- posit this. Everybody knows in the company, as a hypothetical, that stuff has been going on which the next day after the IPO is going to cause the whole thing to tank, that if it doesn't hit the IPO financials the day of, that that is not a risk factor that needs to be disclosed?

MR. BESSETTE: I am saying, Your Honor, that the analysis that is undertaken in that scenario is 303. That is the only basis in which a company has to disclose information that is a material risk to future results.

THE COURT: Section 11 itself does not impose on a company or people marketing securities an obligation to describe the risk of the investment? You are making a

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distinction which I am having a hard time getting my head around. Maybe I am not sophisticated enough to understand this. It sounds to me like the plaintiffs are saying they were monkeying with the numbers ramping up to the IPO, and that there were at least some folks in management who knew it, and that it was at least knowable as well as to some degree known, and therefore, people discharging their obligations to the investing public under Section 11 should have noted the risk associated with that. I hear you saying to me that is just not a cause of action.

MR. BESSETTE: No. What I am saying, Your Honor, is what Section 11 says, it puts an obligation on the issuer to disclose material facts that existed at the time, whether they were known or not, they are knowable, if they existed at the time, then those are facts, you have to disclose them. Now, if those facts are going to have material risks in the future, and that's what the risk factors disclose, all of the risk factors disclose is a 303 analysis.

What I am saying is the only obligation, legally, to disclose a material risk that exists at the time of the IPO that the company reasonably expects will have an impact on net sales and revenues in the future, that is 303, that is the obligation, that is the legal predicate.

THE COURT: And independent of this 303, there

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is no legal obligation stemming from Section 11 itself.

MR. BESSETTE: That's right. A material fact, if you are going to disclose a fact that in your view, as the issuer, is reasonably expected to have a material impact in the future, you have an obligation to disclose that.

What I am saying is the obligation arises under S-K 303. And I heard Mr. Collins say, there is two or three other bases. There are no other legal bases. 303 is the only one. And they haven't met it.

THE COURT: Well, here is the great thing -- Mr. Collins, you look like you have something you feel you must say.

MR. COLLINS: No. If you tell me to sit down, I will sit down.

THE COURT: I don't think I need to hear anymore. All right.

I have some rulings for you, and we will get this thing moving on. I have already spoken about a couple of these. We will run through them and get this done.

The gray marketing, effort to dismiss that, is denied. The gray marketing cause of action stands.

The lack of controls, to the extent that is asserted as a separate cause of action, it should have been separately disclosed. The motion is granted. That is, if anything, only evidence that goes to the assertion that

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there was a gray marketing problem and it doesn't stand as an independent thing that needed to be disclosed. I don't see any basis for treating it differently than that. In short, I reject the notion that that, standing alone, was a material fact that needed to be placed in a prospectus.

The margins aspect, that I am also going to grant the motion to dismiss on. I think that the Tracinda case is apt in this regard, where Judge Farnan said, "Corporations are not required to address stockholders as if they were children in kindergarten. It is thus sufficient if the company provides information as to material facts in a format from which a reasonable investor could reach his own conclusions as to the risks of the transaction."

And calling this a margin issue as opposed to a falling price issue is just an attempt to slice things so thinly as to enter into that realm that Judge Farnan expressly condemned.

The sales practices, however, I am denying the motion to dismiss there. At a minimum, there is an issue of fact here as to whether these trends were known to management, known trends that were quantifiable. And so even independent of the argument that we have been dealing with as to whether there was some different legal basis on which they had to make out their claim here, even if the defense were correct that this were solely based on 303,

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that there was no other legal basis, the defense has not demonstrated that there is no material issue in this regard, that somehow it is admitted that they can't make out a claim there. It looks to me like there are issues of fact with regard to these so-called questionable sales practices.

I will reserve till a later time if I ever have to address it -- maybe I will in the context of dispositive motions at the end of the case -- whether or not the defense is right here that there is not an obligation under Section 11 independent of what Mr. Bessette calls the only obligation, which is one arising under Section 303, if I am using that nomenclature correctly.

I am having a hard time putting my hand right on your brief, Mr. Bessette.

Maybe you will be able to establish that there really is no issue of material fact, and then we will confront the issue of whether Mr. Collins is right that there is some other basis other than the one you have asserted is the only basis. For now, though, it is enough to say there are issues of fact here, and I am not dismissing it, because even on the legal basis you say could be a legal basis, you haven't demonstrated to me that they have admitted that they can't meet the elements of this claim, this cause of action.

Now, I had one additional point I wanted to

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raise with you folks. This is this big case in the sense of a lot of effort has gone into it. I would customarily, if I were granting any part of a motion to dismiss, file a written opinion or memorandum order. But the parties in this case have had the benefit of a very lengthy District Court opinion, round one, a lengthy Circuit Court opinion, round two, a less lengthy but still a product of significant effort memorandum order, including considerable supplemental briefing on class certification, and yet another order which was put out in January of this year. And the basis of that one is escaping me at the moment.

The short of it is, we have been around the block a few times, and we are coming up on a trial date here.

I am not going to take this under advisement for two or three months. I am not going to bump other people out of the queue who are waiting for decisions from me. So I am giving you my decision on this record. If somebody has got an issue with that, you know, they need to let me know right away and I guess I will try to address that.

But I think this is adequate or should be adequate to explain to you the bases of my rulings, what my rulings are, to have you moving forward.

I don't intend for us to be delayed in getting this to resolution anymore. Seven years is enough. It's

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not going to be eight.

Now, if we do get to trial, I think I allowed myself to be persuaded to give three weeks for this trial, and 35 hours per side. I am convinced and persuaded at this point that that was overly generous, particularly in light of how the claims now stand. I am quite sure that this is a case that can be tried in two weeks. So we will go to trial as scheduled, end of August, unless another scheduling order came to the fore which I am not aware of.

I believe we are talking about August 28, 2006 as the trial date. I will put this down for now a ten-day jury trial, 22 hours per side, which, even in a case that's got the number of lawyers that are going into it that this one does, given the character of the allegations, that is sufficient time for the parties to put on their case.

So you can expect to get an order from me today that says the following. The motion to dismiss is granted in part and denied in part. It is granted to the extent that a claim associated with margin squeeze as a separate cause of action is dismissed, a claim associated with lack of controls on distribution of golf equipment as a separate cause of action is dismissed, that in all the respects the motion is denied, and that the trial is scheduled to go forward on its current date for ten days, 22 hours per side.

Does anybody have any questions or issues they

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want to raise while we are all here together about anything I have just said or other matters you may have had that you think need to be put on the table? Mr. Collins.

MR. COLLINS: Quickly, Your Honor. Do I understand that plaintiffs are permitted to take discovery with respect to the lack of controls, lack of preventive measures claim, which the Court has granted the motion with respect to? That is, if it is part of gray marketing, we want to take discovery on it.

THE COURT: Yes. I have not made an evidentiary ruling that this is not probative of a gray marketing problem that the defendants should have known about or did know about. I don't expect to hear discovery disputes in that regard. I am saying, as an independent cause of action, it doesn't stand up. But you can certainly inquire into it, for the reasons I just noted.

MR. COLLINS: Finally, Your Honor, there was an amendment to the November 29th order, dated September 1st. I apologize, Your Honor, I don't know if that has an impact on the trial date. I would need to study the orders to see if that is the case. I am not asking for it, Your Honor. I wanted to bring it to the Court's attention.

THE COURT: I will check.

Whatever our trial date is, it's sticking. All right? The only difference now is we are going to have a

ten-day trial, 22 hours per side. And now our claims are set. We are moving past the motions to dismiss. Okay?

Get your discovery done. Hit your marks on the case-dispositives, if you feel you have got something there. And we will get those turned around and get to the pretrial conference, ready to put this thing in shape to put it in front of a jury if it is still alive at that point, if you haven't otherwise resolved it either amongst yourselves or by dispositive motion that I grant. All right?

We stand in recess.

(Court recessed at 3:20 p.m.)

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